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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,647	02/20/2004	George Mulcaire-Jones	50221-00002	7353

25231 7590 06/21/2006

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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/783,647	Applicant(s) MULCAIRE-JONES, GEORGE	
	Examiner Jeffrey G. Hoekstra	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group II, drawn to claims 13-17, in the reply filed on 05/24/2006 is acknowledged. Because applicant did not distinctly and specifically point out, *with traverse*, the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Applicant's election with traverse of Species A in the reply filed on 05/24/2006 is acknowledged. The traversal is on the ground(s) that the disclosed species were not clearly identified by figure number(s) or example(s) pursuant to MPEP 809.02(a)(B).

This is not found persuasive because neither the figures nor the specification text distinctly provided a preferable manner to delineate the species; alternatively the species were conveniently identified pursuant to MPEP 809.02(a)(B) by their distinguishing characteristics.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 1-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, Group I, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/24/2006.

Information Disclosure Statement

4. The information disclosure statement(s) (IDS) submitted on 01/25/2005 is/are acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97

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and 1.98. Accordingly, the examiner is considering the information disclosure statement(s).

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the --ovulation prediction kit-- must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 13-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Non-Patent Literature IDS reference B: "Fertility Awareness," Family Health International, Network, Vol. 17 No. 1, Fall 1996, pp 1-24. "Fertility Awareness" discloses the claimed a menstrual cycle monitoring apparatus as broadly as structurally claimed (page 11, column 1 paragraph 5 – column 2 paragraph 2), comprising: (a) a string; (b) a first bead positionable on the string; (c) a plurality, four, of second beads positionable on the string; (d) a third bead positionable on the string; (e) a plurality of fourth beads positionable on the string; (f) a fifth bead positionable on the string; (g) a plurality, three, of sixth beads positionable on the string; (h) a seventh bead positionable

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on the string; (i) a plurality eighth beads positionable on the string; and (j) a plurality of tenth beads positionable on the string.

8. Claims 13-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Costello (US 1,661,877). Costello discloses the claimed a monitoring apparatus as broadly as structurally claimed (line 1 –line 82), comprising: (a) a string 8; (b) a first bead 11 positionable on the string; (c) a plurality, four, of second beads, two or more of the beads from element 12, positionable on the string; (d) a third bead 14 positionable on the string; (e) a plurality of fourth beads, two or more of the beads from element 12, positionable on the string; (f) a fifth bead 15 positionable on the string; (g) a plurality, three, of sixth beads positionable, two or more of the beads from element 12, on the string; (h) a seventh bead 16 positionable on the string; (i) a plurality eighth beads, two or more of the beads from element 12, positionable on the string; and (j) a plurality of tenth beads, two or more of the beads from element 12, positionable on the string.

9. Claims 13-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Jennings et al (US 6,747,917 B2). Jennings et al discloses a menstrual cycle monitoring apparatus as best seen in Figure 1 and as broadly as structurally claimed (column 2 line 28 – column 3 line 21 and column 6 line 28 – column 8 line 9), comprising: (a) a string 100; (b) a first bead 102 positionable on the string; (c) a plurality, four, of second beads 104 positionable on the string; (d) a third bead positionable, one bead from element 104, on the string; (e) a plurality of fourth beads 106 positionable on the string; (f) a fifth bead, one bead from element 104, positionable

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on the string; (g) a plurality, three, of sixth beads 108 positionable on the string; (h) a seventh bead, one bead from element 108, positionable on the string; (i) a plurality eighth beads, two or more beads from element 108, positionable on the string; and (j) a plurality of tenth beads, two or more beads from element 108, positionable on the string.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Fertility Awareness" in view of Non-Patent Literature IDS reference J: Fehring, Richard J. "Methods Used to Self-Predict Ovulation: A Comparative Study," Clinical Studies, 19:3 May/June 1990. "Fertility Awareness" discloses the claimed invention, including a ninth bead positionable on the string, except for the ovulation prediction kit. Fehring discloses the use of an ovulation prediction kit for monitoring the fertility cycle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the necklace as taught by "Fertility Awareness", with the ovulation

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prediction kit taught by Fehring for the purpose of increasing the efficacy of a natural birth control method based on various phases of a woman's menstrual cycle.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jennings et al in view of Fehring. Jennings et al discloses the claimed invention, including a ninth bead positionable on the string, except for the ovulation prediction kit. Fehring discloses the use of an ovulation prediction kit for monitoring the fertility cycle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the necklace as taught by Jennings et al, with the ovulation prediction kit taught by Fehring for the purpose of increasing the efficacy of a natural birth control method based on various phases of a woman's menstrual cycle.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JGH

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